

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNPAUL SCHOWACHERT,

Plaintiff,

v.

BILL POLLEY,

Defendant.

No. 1:23-cv-01645-SAB (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN A DISTRICT JUDGE
TO THIS ACTION

FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF ACTION
AS DUPLICATIVE

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Plaintiff filed the instant action on November 27, 2023. (ECF No. 1.)

I.

SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); see also 28 U.S.C. § 1915A(b).

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1 A complaint must contain “a short and plain statement of the claim showing that the
2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
4 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate
6 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.
7 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

8 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
9 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d
10 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be
11 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
12 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss
13 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant
14 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s
15 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d
16 at 969.

17 II.

18 SUMMARY OF ALLEGATIONS

19 The Court accepts Plaintiff’s allegations in his complaint as true *only* for the purpose of
20 the screening requirement under 28 U.S.C. § 1915.

21 Plaintiff names Bill Polley Jail Commander and medical nursing at Tuolumne County Jail,
22 as Defendants.

23 Bill Polley willingly helped cover up his employees attempted murder of Plaintiff causing
24 a closed head traumatic brain injury. Plaintiff lost his wife, kids, home, inability to ever hunt,
25 fish, drive, walk and hike.

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1 “Medical on Duty” doctored body report failing to note the giant blood blister rupture in
 2 his right main blood vessel. The first conflicting report is in the helicopter M.E. Anbraine
 3 statements that only blunt force trauma could cause the amount of bruising on Plaintiff’s brain
 4 and it took five years for the bruising to heal.

5 III.

6 DISCUSSION

7 An examination of Plaintiff’s instant complaint and a review of the Court’s docket reveals
 8 that it is duplicative of the complaint filed in Schowachert v. Polley, No. 1:21-cv-01107-NODJ-
 9 HBK (Schowachert I).

10 “[A] duplicative action arising from the same series of events and alleging many of the
 11 same facts as an earlier suit” may be dismissed as frivolous or malicious under section 1915(e).
 12 See Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988). “Dismissal of the duplicative
 13 lawsuit, more so than the issuance of a stay or the enjoinder of proceedings, promotes judicial
 14 economy and the ‘comprehensive disposition of litigation.’ ” Adams v. California Dep’t of Health
 15 Servs., 487 F.3d 684, 692 (9th Cir. 2007) (citation omitted), overruled on other grounds by Taylor
 16 v. Sturgell, 553 U.S. 880, 904 (2008). To determine whether a claim is duplicative, courts use the
 17 test for claim preclusion. Adams, 487 F.3d at 688. “Thus, in assessing whether the second action
 18 is duplicative of the first, [courts] examine whether the causes of action and relief sought, as well
 19 as the parties or privies to the action, are the same.” Id. at 689 (citations omitted). “Plaintiffs
 20 generally have no right to maintain two separate actions involving the same subject matter at the
 21 same time in the same court and against the same defendant.” Id. at 688 (internal quotation marks
 22 and citations omitted).

23 A prisoner complaint that merely repeats pending or previously litigated claims may be
 24 considered abusive and dismissed under the authority of 28 U.S.C. § 1915A. Cf. Cato v. United
 25 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citing Bailey v. Johnson, 846 F.2d at 1021)
 26 (duplicative in forma pauperis complaint may be considered abusive and dismissed under 28
 27 U.S.C. § 1915). That a prisoner adds an additional defendant in his later-filed action does not
 28 compel a different result. See Bailey, 846 F.2d at 1021 (complaint repeating same allegations

1 asserted in earlier case, even if now filed against new defendants, is subject
2 to dismissal as duplicative).

3 In both this action and Schowachert I, raises claims against Bill Polley related to a brain
4 injury by officials while housed at Tuolumne County Jail and there was a cover-up to the
5 attempted murder. The Court finds that this action is duplicative of Schowachert I because it
6 repeats the same allegations as in that action.¹ The fact Plaintiff has added the medical
7 department as another Defendant to this action does not compel a different result. See Bailey,
8 846 F.2d at 1021 (complaint repeating same allegations asserted in earlier case, even if now filed
9 against new defendants, is subject to dismissal as duplicative). Accordingly, the instant
10 complaint should be dismissed as duplicative. Furthermore, given this defect, the Court finds that
11 further amendment would be futile. See California Architectural Bldg. Prod. v. Franciscan
12 Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath
13 Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall
14 be freely given, the court does not have to allow futile amendments).

15 **IV.**

16 **ORDER AND RECOMMENDATION**

17 Based on the foregoing, it is HEREBY ORDERED that the Clerk of Court shall randomly
18 assign a District Judge to this action.

19 Further, it is HEREBY RECOMMENDED that the instant action be dismissed as
20 duplicative.

21 This Findings and Recommendation will be submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
23 **days** after being served with this Findings and Recommendation, Plaintiff may file written
24 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
25 Findings and Recommendation." Plaintiff is advised that failure to file objections within the

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27 ¹ Plaintiff has previously filed two other actions in this Court, both of which were dismissed as duplicative. See
28 Schowachert v. Polley, No. 1:22-cv-01249-JLT-BAM (E.D. Cal. Nov. 8, 2022); Schowachert v. Polley, No. 1:23-cv-
01579-JLT-EPG (Dec. 19, 2023).

1 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,
2 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: **December 19, 2023**


UNITED STATES MAGISTRATE JUDGE